

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROTOUCH, L.L.C. and 30/10 WEIGHT
LOSS, LLC,

Plaintiffs,

vs.

PAIGE DOYLE, AWAKEN 180 INC., NEWTON
WEIGHTLOSS, LLC, PEABODY WEIGHTLOSS,
LLC AND QUINCY WEIGHTLOSS, LLC,

Defendants.

PAIGE DOYLE, AWAKEN 180 INC., NEWTON
WEIGHTLOSS, LLC, PEABODY WEIGHTLOSS,
LLC AND QUINCY WEIGHTLOSS, LLC,

Counterclaimants/Third Party
Plaintiffs

vs.

MICROTOUCH, L.L.C. and 30/10 WEIGHT
LOSS, LLC,

Counterclaim Defendants

and

DR. ROCCO NELSON, an individual; and DR.
LINDA DEGROOT (and their marital community);
and one or more JOHN DOES, currently not known
to Third Party Plaintiffs,

Third Party Defendants

CASE NO. 2:17-cv-00996-MJP

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c); this agreement allows the parties to this action and third parties the ability to designate material, in limited and appropriate circumstances as CONFIDENTIAL or “Attorneys’ Eyes Only”; does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles; and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

CONFIDENTIAL material shall include the following documents and tangible things produced or otherwise exchanged:

- a. Competitive business information that the party designating it as CONFIDENTIAL, has taken reasonable steps to maintain as confidential, and which is not otherwise publicly available or reasonably discoverable by lawful means;
- b. Personal information where disclosure of that information would violate a person’s privacy; and
- c. Financial information (including but not limited to tax return, financial statement, banking records, point-of-sale records, brokerage records, financial books and records, and electronic data containing financial information).

3. SCOPE

The protections conferred by this agreement cover not only CONFIDENTIAL material (as defined above) or “Attorneys’ Eyes Only” material (see Section 7), but also (1) any information

1 copied or extracted from CONFIDENTIAL material or “Attorneys’ Eyes Only”; (2) all copies,
2 excerpts, summaries, or compilations of CONFIDENTIAL or “Attorneys’ Eyes Only” material;
3 and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal
4 CONFIDENTIAL or “Attorneys’ Eyes Only” material.

5 However, the protections conferred by this agreement do not cover information that is in
6 the public domain or becomes part of the public domain through trial or otherwise.

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use CONFIDENTIAL material that is
9 disclosed or produced by another party or by a non-party in connection with this case only for
10 investigating, prosecuting, defending, or attempting to settle this litigation. CONFIDENTIAL
11 material may be disclosed only to the categories of persons and under the conditions described in
12 this agreement. CONFIDENTIAL material must be stored and maintained by a receiving party at
13 a location and in a secure manner that ensures that access is limited to the persons authorized under
14 this agreement.

15 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
16 by the Court or permitted in writing by the designating party, CONFIDENTIAL material may be
17 disclosed only to the following persons.

- 18 (a) the parties to this litigation;
- 19 (b) counsel of record for the parties to this litigation as well as employees of
20 counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 21 (c) the officers, directors, and employees of the parties to this litigation to
22 whom disclosure is reasonably necessary for this litigation;
- 23 (d) experts and consultants to whom disclosure is reasonably necessary for this
24 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 (e) the court, court personnel, and court reporters and their staff;
- 26

1 (f) independent litigation support services reasonably necessary to assist in this
2 litigation, provided that counsel for the party retaining these services instructs the services not to
3 disclose any CONFIDENTIAL material to third parties and, when appropriate, to return all
4 originals and copies of any CONFIDENTIAL material;

5 (g) during their depositions, witness (and their counsel, if any) to whom
6 disclosure is reasonably necessary and who have signed the “Acknowledgement and Agreement
7 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
8 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
9 CONFIDENTIAL material must be labeled CONFIDENTIAL by the court reporter and may not
10 be disclosed to anyone except as permitted under this agreement; and

11 (h) the author or prior recipient of a document containing the CONFIDENTIAL
12 information.

13 4.3 Filing CONFIDENTIAL Material. Before filing CONFIDENTIAL material or
14 discussing or referencing such material in Court filings, the filing party shall confer with the
15 designating party to determine whether the designating party will remove the CONFIDENTIAL
16 designation, whether the document can be redacted, or whether a motion to seal or stipulation and
17 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed
18 and the standards that will be applied when a party seeks permission from the Court to file material
19 under seal.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this agreement must take
23 care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the
26

1 material, documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for
12 protection under this agreement must be clearly so designated before or when the material is
13 disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for protection,
18 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
19 markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
21 and any participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
23 after reviewing the transcript. Any party or non-party may, within twenty (20) days after receiving
24 the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
25 exhibits thereto, as CONFIDENTIAL. If a party or non-party desires to protect CONFIDENTIAL
26 information at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing/designating party must affix in a
2 prominent place on the exterior of the container or containers in which the information or item is
3 stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item
4 warrant protection, the producing/designating party, to the extent practicable, shall identify the
5 protected portion(s).

6 (d) All provisions of this agreement apply whether the confidentiality
7 designation appears as “CONFIDENTIAL” (all capital letters) or “Confidential” (not all capital
8 letters).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the producing/designating
11 party’s right to secure protection under this agreement for such material. Upon timely correction
12 of a designation, the receiving party must make reasonable efforts to ensure that the material is
13 treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
22 regarding confidential designations without involvement by the Court. Any motion regarding
23 confidential designations or for a protective order must include a certification, in the motion or in
24 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
25 with other affected parties in an effort to resolve the dispute without court action. The certification
26

1 must list the date, manner, and participants to the conference. A good faith effort to confer requires
2 a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without intervention
4 by the Court, the producing/designating party may file and serve a motion to retain confidentiality
5 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
6 of persuasion in any such motion shall be on the producing/designating party. Frivolous
7 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
8 expenses and burdens on other parties) may expose the challenging party to sanctions. All parties
9 shall continue to maintain the material in question as CONFIDENTIAL until the Court rules on
10 the challenge.

11 7. ATTORNEYS' EYES ONLY

12 7.1 Mutual Designation. Only if all parties' counsel mutually agree, the parties'
13 counsel may mutually designate specifically-identified material produced in this litigation as
14 "Attorneys' Eyes Only."

15 7.2 Disclosure. When material is mutually designated "Attorneys' Eyes Only" by all
16 parties' counsel, unless otherwise ordered by the Court, "Attorneys' Eyes Only" materials may be
17 disclosed only to (a) counsel of record for the parties to this litigation, as well as employees of
18 counsel to whom it is reasonably necessary to disclose the information for this litigation; and (b)
19 the court, court personnel, and court reporters and their staff on a motion under Section 7.3.
20 "Attorneys' Eyes Only" material must be stored and maintained by parties' counsel at a location
21 and in a secure manner that ensures that access is limited to the foregoing persons.

22 7.3 Motion Practice. If any party's counsel subsequently desires to remove the
23 previously mutually-agreed "Attorneys' Eyes Only" designation from the material, but another
24 party's counsel or a third party does not agree to the de-designation, and they cannot resolve the
25 dispute without court intervention, then, in accordance with Local Civil Rule 37 and/or Civil Rule
26 45, as appropriate, the parties and/or third party shall submit the designation challenge by motion

1 to the court for resolution. The meet-and-confer and certification obligations under Section 6.2
2 apply to any such motion practice. The parties shall continue to maintain the material in question
3 as “Attorneys’ Eyes Only” until the Court rules on the motion.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
8 “Attorneys’ Eyes Only,” that party must:

9 (a) promptly notify the designating party in writing and include a copy of the
10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to
12 issue in the other litigation that some or all of the material covered by the subpoena or order is
13 subject to this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by
15 the designating party whose confidential material may be affected.

16 Nothing in this agreement shall be construed as authorizing or encouraging a party
17 receiving an order or subpoena to disobey a lawful directive from another court.

18 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 CONFIDENTIAL or “Attorneys’ Eyes Only” material to any person or in any circumstance not
21 authorized under this agreement, the receiving party must immediately (a) notify in writing the
22 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
23 copies of the protected material, (c) inform the person or persons to whom unauthorized
24 disclosures were made of all the terms of this agreement, and (d) request that such person or
25 persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
26 Exhibit A.

1 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order or
7 agreement that provides for production without prior privilege review. The parties agree to the
8 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 11. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must destroy all CONFIDENTIAL and “Attorneys’ Eyes Only” material, including all
12 copies, extracts and summaries thereof, unless the parties agree otherwise in writing at the
13 conclusion of this action. The receiving party’s counsel shall verify the destruction in a
14 certification to the producing party.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
18 product, even if such materials contain CONFIDENTIAL or “Attorneys’ Eyes Only material.

19 The confidentiality obligations imposed by this agreement shall remain in effect until a
20 producing/designating party agrees otherwise in writing or a court orders otherwise.

21 12. MODIFICATION AND NON-ADMISSION

22 Nothing contained in this agreement, nor any action taken in compliance with it, shall (i)
23 operate as an admission by any party that any particular document or information is, or is not,
24 confidential; or (ii) prejudice in any way the right of any party to seek a court determination of
25 whether particular information should have been, should, or may be disclosed, or if disclosed,
26 whether it should remain subject to the terms of this order. Any party may request the court to

1 modify or otherwise grant relief from any provision of this order. Nothing in this Order shall
2 operate as an admission by any party that any particular document is, or is not, admissible in
3 evidence at the trial of this action.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated this 15th day of December, 2017.

6 ***Attorneys for Plaintiffs/Counterclaim-***
7 ***Defendants*** MICROTOUCH, L.L.C. and
30/10 WEIGHT LOSS, LLC

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9 By: /s/ Janissa A. Strabuk

10 By: /s/ Noelle L. Chung

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24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
26 documents or electronically stored information in this proceeding shall not, for the purposes of this
proceeding or any other proceeding in any other court, constitute a waiver by the producing party
of any privilege applicable to those documents, including the attorney-client privilege, attorney
work-product protection, or any other privilege or protection recognized by law.

27 DATED: December 19, 2017

28 

29 Marsha J. Pechman
30 United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington in the case of
7 MICROTOUCH, L.L.C., et al. v. PAIGE DOYLE, et al.; Case No.: 2:17-cv-00996-MJP, United
8 States District Court for the Western District of Washington. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is subject to
12 this Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action.

17
18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
22
23
24
25
26